

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: : Docket #18cv11710  
QUIZHPI, :  
Plaintiff, :  
- against - :  
STEAKHOUSE, INC., et al., : New York, New York  
April 16, 2019  
Defendants. :  
----- :

PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL GORENSTEIN  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-Direct</u>	<u>Re-Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: In the matter of Quizhpi versus 212  
3 Steakhouse, docket number 18cv11710, counsel, please state  
4 your appearance for the record and introduce your client.

5 MR. ABDUL HASSAN: Your Honor, Mr. Abdul Hassan  
6 for the plaintiff, Mr. Luis Quizhpi, who is also  
7 present in the courtroom, good afternoon.

8 MR. MITCHELL SEGAL: Mitchell Segal for all of  
9 the defendants, I have Nikolay Volper, individual  
10 defendant, as well as the corporate representative.

11 THE COURT: Okay, welcome everyone, have a  
12 seat and let me tell you a little bit about our  
13 process. First, this is off the record, so I'm going  
14 to ask the clerk to turn off our taping system.

15 (OFF THE RECORD)

16 THE COURT: All right, we're back on the  
17 record. The parties, we've had a settlement  
18 conference, the parties have reached an agreement on  
19 the terms of the settlement. The parties have signed a  
20 consent form and assuming it's accepted Judge Furman  
21 I'm giving them the opportunity now to make the  
22 application orally under *Cheeks*. So I'll hear from  
23 plaintiff's counsel.

24 MR. HASSAN: Yes, Your Honor, thank you very  
25 much. So the parties have reached a gross settlement

2 of \$20,000. Of that amount, after a one-third fee we  
3 have costs of \$558 dollars which consists of a \$400  
4 filing fee and \$158 to serve the corporate defendant  
5 and the individual defendant. That leaves us with a  
6 net settlement of \$19,442. Of that, the legal fee  
7 would be one-third, a little less than one-third,  
8 which will be \$6,480. Of the remaining portion after  
9 fees and costs the plaintiff will be left with, let me  
10 see, \$12,962. Usually that's split in two, with half  
11 of it going to W-2 wages and half of it for liquidated  
12 damages and penalties, et cetera, to be reported in a  
13 1099 box 3.

14 | THE COURT: Is that all right with you guys?

15 MR. HASSAN: Could you do that, like one W-2,  
16 one 1099 check?

17 MR. SEGAL: Sure.

18 MR. HASSAN: One of the terms and conditions  
19 of the settlement, it's to be paid in eight monthly  
20 installments with the first payment due 30 days from  
21 today, or 10 days after Court approval, whichever is  
22 later, and the subsequent payments monthly after the  
23 date the first payment is due. The checks to the  
24 plaintiff will be made out to the plaintiff, the W-2  
25 check and the 1099 check, and the check to my firm

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2 will be made out to my firm. The settlement is fair  
3 and reasonable under the circumstances because, based  
4 on the time records, it fully compensates the  
5 plaintiff for his unpaid FLSA overtime wages which, in  
6 terms of the records, are about 400 bucks. And then it  
7 fully compensates them for all unpaid wages, including  
8 the minimum wages due under New York State law.

9                   The additional monies, it also compensates for  
10 liquidated damages, if you double that amount of  
11 approximately \$4,000, and then the remaining monies  
12 can be attributed to penalties under New York Labor  
13 Law. The one-third fee is usually a standard fee, but  
14 even if you cross-check it hourly it will be less than  
15 the hourly fee in this case. And for those reasons, as  
16 well, I would say, given the instalment nature of the  
17 plan, it looks like the ability to pay is an issue and  
18 even though the plaintiff may have a strong case on  
19 liability, collecting any resulting judgment may be a  
20 problem if the case continues through litigation.  
21 There is also other risk of litigation, costs, time,  
22 delays, aggravation, and so on, and I think it's in  
23 the best interests of both sides to settle their  
24 differences and make compromises. And in this case, as  
25 I said, it looks like there is adequate and full

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2 compensation for the wages at issue. For those reasons  
3 I think this settlement should be approved under the  
4 *Cheeks* decision.

5 THE COURT: All right, there is also a term  
6 that if there is a failure to make a payment you're  
7 going to give, I assume, a notice and an opportunity  
8 to cure?

9 MR. HASSAN: Yes, Your Honor, in the event of  
10 a default to make a payment we will provide notice by  
11 email to defense counsel, and with a 10 day period to  
12 cure. If the default is not cured within 10 days,  
13 plaintiff will be entitled to a judgment against both  
14 defendants individually and jointly for double the  
15 amount outstanding plus the cost of addressing the  
16 default and collecting any outstanding money.

17 THE COURT: All right, are the terms of the  
18 settlement accurately stated, by the way?

19 MR. SEGAL: Yes.

20 THE COURT: All right.

21 MR. HASSAN: And by way of clarification, cost  
22 would include attorney's fees --

23 THE COURT: For collection, cost of collection  
24 includes attorney's fees. Are you planning to do a  
25 written document?

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2 MR. HASSAN: No, Your Honor, this is fine with  
3 us. We'll get the transcript, we'll order the  
4 transcript.

5 THE COURT: All right. So Mr. Quizhpi, do you  
6 understand the terms of the settlement?

7 MR. LUIS QUIZHPI: Yes.

8 THE COURT: Okay. Did you have a chance to  
9 discuss it with your lawyer?

10 MR. QUIZHPI: Yes.

11 THE COURT: Do you need any further time to  
12 discuss it with him?

13 MR. QUIZHPI: No.

14 THE COURT: Are you agreeing to this  
15 settlement?

16 MR. QUIZHPI: Yes.

17 THE COURT: All right. You are Mr. Volper?

18 MR. VOLPER: Yes, Your Honor.

19 THE COURT: Okay, did you understand the terms  
20 of this settlement?

21 MR. VOLPER: Yes, sir.

22 THE COURT: Do you understand that you will be  
23 personally liable if the payment is not made?

24 MR. VOLPER: Yes, sir.

25 THE COURT: Did you have a chance to discuss

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2 it with your attorney?

3 MR. VOLPER: Yes.

4 THE COURT: Do you need further time to  
5 discuss it with him?

6 MR. VOLPER: No.

7 THE COURT: Are you agreeing to this  
8 settlement?

9 MR. VOLPER: Yes, sir.

10 THE COURT: Are you authorized to agree to it  
11 on behalf of 212 Steakhouse, Inc.?

12 MR. VOLPER: Yes, sir.

13 THE COURT: All right, anything else the  
14 plaintiff wants me to ask?

15 MR. SEGAL: Your Honor, if I may?

16 THE COURT: Yes.

17 MR. SEGAL: You're not drafting a settlement  
18 agreement so in that case I also want it acknowledged  
19 that the plaintiff releases the defendant from all  
20 labor related claims under the Fair Labor Standards  
21 Act, the New York Labor Law, and any other applicable  
22 law, from the time he began employment to the date  
23 today, and any claims that are included in the  
24 complaint get released, as well as any claims he could  
25 have brought within the complaint based on those labor

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2 laws.

3 THE COURT: Okay, I mean I'd be happy to have  
4 you send him a release to sign if you want to do that.  
5 You'd rather do it orally?

6 MR. SEGAL: I'd rather have a release, to be  
7 honest with you.

8 THE COURT: Yes, I assumed a release was part  
9 of this.

10 MR. HASSAN: The only issue is the Judge has  
11 the ultimate say in the scope of the release and so  
12 usually what I, what the parties agree to, whatever is  
13 the broadest release allowable under *Cheeks*, we agree  
14 to that. So Your Honor can just make a ruling --

15 THE COURT: I'm happy with a general release,  
16 so if you want to do that, that's fine with me. Do you  
17 want to send it to him?

18 MR. SEGAL: Sure.

19 THE COURT: Okay. And you have to get him to  
20 sign it. Sir, do you understand that you can't sue  
21 these people for anything that ever happens, this is  
22 now the end of your relationship with them, anything  
23 from the beginning of the world to today you can't sue  
24 them for it, do you understand?

25 MR. QUIZHPI: Yes.

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2 THE COURT: Okay. Is that all right with you?

3 MR. SEGAL: Yes.

4 THE COURT: Okay. I think we're done. All  
5 right, thank you everyone.

6 MR. HASSAN: Thank you, Your Honor. Thank you  
7 very much.

8 MR. SEGAL: Thank you, Your Honor.

9 (Whereupon the matter is adjourned.)

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3 C E R T I F I C A T E  
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5 I, Carole Ludwig, certify that the foregoing  
6 transcript of proceedings in the United States District  
7 Court, Southern District of New York, Quizhpi versus 212  
8 Steakhouse, Inc., et al., Docket No. 18cv11710, was  
9 prepared using digital electronic transcription equipment  
10 and is a true and accurate record of the proceedings.

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Signature Carole Ludwig

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Date: May 24, 2019

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